

mark lane

FILED

JAN 26 2011

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]* DEPUTY CLERK

for the

Western District of Texas

United States of America)

v.)

JOSE LIRA)

Case No.

*1:11-m-48**Defendant(s)*

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of November 2010 - January 25, 2011 in the county of Bell, Travis, and Williamson in the
Western District of Texas, the defendant(s) violated:

Code Section

Title 18, Section 922 (g) (1)
 Title 18, Section 922 (a) (6)
 Title 18, Section 2 and 371

Offense Description

Felon in possession of a firearm
 False Statements in the Acquisition of a Firearm from a Licensed Dealer
 Aiding and Abetting and Conspiracy

This criminal complaint is based on these facts:

 Continued on the attached sheet.*Kristi McPartlin*

Complainant's signature

Kristi R. McPartlin, ATF Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date:

*1/25/11**Rogin*

Judge's signature

City and state: AUSTIN, TX

Robert Pitman, United States Magistrate Judge

Printed name and title

AFFIDAVIT

1. I, Kristi R. McPartlin, being duly sworn, depose and state that I am a Special Agent for the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, and have been so employed since August 2002. I am a graduate of the Federal Law Enforcement Training Center and the ATF National Academy. That the affiant, as an ATF Special Agent, is empowered to make arrests, conduct investigations, and execute search and arrest warrants relative to Federal firearms offenses pursuant to Title 18 and Title 26 of the United States Code.
2. This affidavit sets forth facts that establish probable cause to believe that evidence of the commission of violations of Title 18 U.S.C. Sections 371, 922 (a)(6), 922 (g)(1) and 2 can be found at the premises located at 600 Barwood Park # 1626, Austin, Travis County, Texas 78753.
3. Your affiant is familiar with the Federal criminal laws and know that it is a violation of Title 18 U.S.C. Sections 371, 922 (a)(6), 922 (g)(1) and 2, which is aiding and abetting an offense against the United States and conspiracy to commit an offense against the United States, said offenses being, making false statements in the acquisition of firearms from a licensed firearms dealer and being a felon in possession of a firearm, can be found at the property located at 600 Barwood Park # 1626 , Austin, Travis County, Texas, 78753 to include any associated storage buildings or parking/garage area as well as all the vehicles parked in immediate proximity with an affirmative link to the residence, as more completely described in "Attachment A".
4. Your affiant is currently investigating alleged violations of Federal firearms laws by: Jose LIRA, W/M, DOB- 09/27/1976. LIRA is a previously convicted felon. LIRA's previous felonies are listed below:
 - 2002- Securing the Execution of a Document by Deception, Williamson County, Texas, Cause# 99618K368, sentenced to the Texas Department of Criminal Justice.
 - 1999- Title 8 U.S.C. Section 3, Knowingly and willfully aiding and abetting an alien to enter the United States at a time and place other than as designated by Immigration Officers, Western District of Texas; 2:99-CR-545
5. LIRA currently resides at 600 Barwood Park # 1626, Austin, Travis County, 78753. This investigation also involves subjects allegedly conspiring with LIRA to unlawfully acquire firearms from a federally licensed firearms dealer.

6. That on or about December 14, 2010, your affiant received information from Guns Galore (a Federal Firearms Licensee) in Killeen, Texas in regards to suspected "straw purchases" made by Anna Cecilia PEREZ , W/F, DOB- 03/10/1972 and Monica Beltran PASTOR, W/F, DOB- 01/16/1978. PEREZ acquired one (1) firearm on December 6, 2010. PASTOR acquired two (2) firearms on December 6, 2010 and one (1) firearm on December 14, 2010. The firearms acquired by PEREZ and PASTOR are as follows:
 - PEREZ- Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1972CC0647
 - PASTOR- Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1965OP3311
 - PASTOR- IO Inc., Model AK47-C, 7.62 X 39mm caliber rifle bearing serial # 005032
 - PASTOR- Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1965HI1839
7. The affiant knows that "straw purchasing" firearms involves one subject filling out firearms transaction forms to acquire firearms from a licensed firearms dealer for another subject/s who either cannot pass the background check to purchase firearms or is a person/s involved in illegal activity who does not wish to place their name on the transaction forms. The "straw purchaser" must provide a false statement on the transaction forms by stating that they are the actual purchaser of the firearm/s, when in fact they are not the actual purchaser, but are just filling out the forms for someone else who is paying for the firearms and who usually takes possession of the firearms almost immediately after they are purchased. This is a violation of 18 U.S.C., Section, 922(a) (6) and aiding, abetting, or conspiring to commit said offense would be in violation of 18 U.S.C., Sections 2 and 371.
8. That on or about December 18, 2010, your affiant received information from Guns Galore (a Federal Firearms Licensee) in Killeen, Texas in regards to suspected "straw purchases" made by Krystal AYALA, W/F, DOB- 10/27/1986. AYALA acquired two (2) firearms on December 18, 2010. The firearms acquired by AYALA are as follows
 - Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1973EP3786
 - Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1984PH4506
9. On December 21, 2010, your affiant interviewed Krystal AYALA. AYALA admitted that she had purchased the firearms for her friend's uncle, Joe (later identified as Jose LIRA). AYALA stated that she did not know what happened to the firearms. AYALA stated that Joe had approached her about

purchasing firearms for him. AYALA said that Joe had offered to pay her one hundred dollars for each firearm that she purchased.

10. AYALA went to Guns Galore with Joe's niece, Giovanna RIVERA, and Nick TOVAR to Killeen to purchase the firearms. AYALA said that Joe told her to purchase the AK-47 style rifles. AYALA also said that Giovanna RIVERA went into the gun store to help oversee the firearms purchase.
11. According to AYALA, Joe provided the cash for the firearms transaction. Joe gave Giovanna the money and Giovanna gave the money to AYALA. AYALA said she filled out the ATF Form 4473 and purchased two AK-47 style rifles. After the transaction, she, RIVERA, and Nicholas TOVAR drove back to Austin and met Joe in the parking lot of Walmart and 183 and IH-35. AYALA said Joe was in his truck and he took the guns and put them into his vehicle, which your affiant has identified as a 1997 Ford F-Series Pickup truck bearing Texas LP# 45CKL4. Joe paid her the \$100 per firearm. AYALA also said that Nicholas TOVAR had told her that "they" scratched the serial numbers off of the firearms. AYALA said she had never seen Joe and Nicholas TOVAR scratch the serial numbers off of any guns, but she again stated that she was told that by Nicholas TOVAR.
12. AYALA said that Nick TOVAR told her that his uncle Joe said that if she, AYALA, knew of anyone that was interested in purchasing firearms for them to let them know and they would give her a "finder's fee" of \$100 per person. AYALA said that she thought that Joe, TOVAR and RIVERA traveled around the area to buy firearms at different locations.
13. AYALA said that Joe went through the process of explaining to her how to fill out the ATF Form 4473. AYALA stated that Joe told her to fill out the form by answering "yes" to question number one (The question about being the actual purchaser of the firearm) and "no" to all the other questions. Joe also told her not to answer question number twelve.
14. On December 29, 2010, your affiant interviewed Monica PASTOR. During the course of this interview PASTOR admitted that she had purchased the firearms for some guy named Joey. Joey allegedly worked as a bouncer at a club off of Naches. PASTOR did not know Joey's last name (Joey was later identified as Jose LIRA). She then proceeded to say that she was not the actual purchaser of the firearms. She again stated that she bought them for Joey (the bouncer).
15. PASTOR claimed that she was recruited to purchase the firearms by her friend Anna PEREZ. According to PASTOR, Anna had previously purchased firearms for Joey, but she [PASTOR] did not know where.

PASTOR said that Joey gave her the money, one hundred dollars (\$100), for every firearm that she purchased.

16. PASTOR told the ATF Agents that Joey followed her and Anna out to Killeen and watched them from somewhere while they purchased the firearms. PASTOR also said Joey has sent another guy with her and Anna to the gun store. PASTOR did not know who the other guy was, but said he followed them in a small white car.
17. PASTOR said the guy in the white car went into the gun store and gave her and Anna a signal (touching the firearm) for the guns he wanted them to purchase. ATF SA McPartlin showed PASTOR a Texas Driver's License Photo of Nicholas Daniel TOVAR. The photo had all the identifiers for Nicholas Daniel TOVAR covered up. PASTOR told the ATF Agents that the photo was the same person that was sent into the gun store and gave them the sign for the guns they were supposed to purchase.
18. PASTOR said that Joey told her he had a criminal background and he couldn't get the guns. PASTOR said Joey had told her that no one would ever know that the guns were the ones she [PASTOR] had purchased.
19. PASTOR said she had initially kept the receipts for the guns purchased, but then stated that Joey had taken them from her several days later.
20. The second time PASTOR bought firearms, she claimed that Joey followed her up to Killeen and watched her from an unknown location purchase the firearms. Once she was done buying the firearms. PASTOR was called by Joey and he instructed her to drive back to Austin. On the drive back, PASTOR said that Joey told her to meet him at the Rudy's BBQ on IH-35. PASTOR transferred the firearms to Joey at the Rudy's BBQ. PASTOR saw LIRA place the firearms in the back of his 1997 Ford F-Series Pickup truck.
21. Your affiant discovered the identification of "Joe" and "Joey" by searching old reports through the Austin Police Department records. Your affiant discovered a report generated on November 10, 2010 (Austin Police Department General Offense # 2010-5059987). This report was called in by a female by the name of Isela Esmeralda GUADARDO, W/F, DOB-05/05/1974. GUADARDO told officers from Austin Police Department that her ex-boyfriend, Jose LIRA, was threatening her.
22. GUADARDO told Austin Police officers that LIRA was a member of the "Tango Blast" gang. She also said that LIRA is involved in a lot of illegal activity. GUADARDO said LIRA was involved with illegal alien smuggling, along with his mother, and also transporting firearms into Mexico. GUADARDO also claimed that LIRA had told her that if he ever got arrested

- and found out that she had anything to do with it he would make her and her family pay.
23. GUADARDO continued to tell Austin Police officers that LIRA would gather firearms and give them to his mother, Aurelia HERNANDEZ. According to GUADARDO, HERNANDEZ would take the firearms into Mexico to sell.
 24. On December 29, 2010, your affiant met with PASTOR and showed her a photo line-up with six (6) similar looking male subjects. PASTOR immediately selected the picture of Jose "Joey" LIRA. She said that this is the subject that she "straw purchased" guns for.
 25. Your affiant showed PASTOR a second photo line-up with six (6) similar looking male subjects. PASTOR immediately selected the photo of Nick TOVAR. She stated that this was the subject who also was involved in her "straw purchasing" firearms. This subject followed her to the gun stores and pointed out which guns she was to buy.
 26. PASTOR recalled that she had made another "straw purchase" which was in November and before the "straw purchases" she made at Guns Galore in Killeen. She said that the store was in a strip mall in Cedar Park. She said that Anna was with her and that the person known to ATF as Nick TOVAR went into the store with them. PASTOR said that TOVAR was telling the employees at the store that they were his aunts. TOVAR pointed out to PASTOR the correct guns to purchase.
 27. PASTOR said that Nick TOVAR gave her the money to make the buy at the Cedar Park store and that he followed her into the store. She said that he had apparently been in the store before and possibly had bought guns before in this store. She said that after leaving the store she drove a short distance and handed over to him the gun she bought. PASTOR then drove to the Wal-Mart parking lot on 183 just north of I-35 where she met "Joey" (LIRA) at which time he paid her \$100.00 for buying the gun.
 28. PASTOR stated that she was given \$100.00 for each gun she bought for LIRA. She said that she bought a total of five (5) guns and was paid by LIRA a total of \$500.00.
 29. On January 4, 2011, your affiant met with Krystal AYALA to show her a photo line-up. AYALA immediately chose the photo of Jose LIRA, saying that is the person she knew as "Joe", for whom she "straw purchased" guns.
 30. On January 12, 2011, your affiant interviewed Anna C. PEREZ. PEREZ admitted she purchased firearms three times for a friend of hers named "Joey". PEREZ stated that she did not know Joey's last name. PEREZ continued to say that Joey gave her the cash to purchase the firearms. PEREZ

also claimed that she did not know what happened to the firearms once she gave them to Joey. PEREZ told the ATF Agents that Joey paid her one hundred dollars per firearm that she purchased.

31. PEREZ started to describe some of her firearms purchases to the ATF Agents. PEREZ first described going to an L-Shaped strip mall to buy guns. She said it was not quite in Cedar Park, but it was up north (in Austin). The place she was describing was Heritage Firearms off of Anderson Mill Road and Highway 183 in north Austin.
32. Next, PEREZ said she had gone to Killeen to purchase some guns. She described what would be Guns Galore. PEREZ stated that one time she had gone to Killeen with Peter TOVAR's son (that would be Nicholas TOVAR), but she had forgotten her Texas identification card. Nick TOVAR ended up having to purchase the firearms because of her forgetting her ID. She continued to say that Nick TOVAR ended up purchasing two (2) firearms that day.
33. Then PEREZ told the ATF Agents that Joey had sent her to a gun show in south Austin located where the old Target store used to be. She said that transaction occurred a couple of months prior. PEREZ claimed that Joey had taken her to the gun show.
34. PEREZ then stated that she had been to Killeen a second time with a friend of hers named Monica PASTOR.
35. PEREZ said that Joey had asked her [PEREZ] to go to the border to pick up the cash that was used to fund the purchase of the firearms (PEREZ claimed the dollar amount to be somewhere in between fifteen thousand dollars and twenty five thousand dollars). Joey was going to pay PEREZ one hundred dollars for going to the border (two hundred dollars if she had to stay overnight). PEREZ said that she told Joey "NO" because it was not going to be worth it to drive all the way to the border and back for one hundred dollars.
36. Your affiant asked PEREZ where the receipts for all the gun purchases were and PEREZ stated that Joey took all of them because he keeps really tight money records. PEREZ confirmed that Joey asked for the receipts specifically.
37. PEREZ acquired the following firearms for LIRA:
 - Bushmaster, Model XM15, 5.56 mm caliber rifle, SN# L519394 (Heritage Firearms-11/12/2010)
 - Stage Arms, Model Stag-15, 5.56mm caliber rifle, SN# 116376 (Ray Sparks – 11/13/2010)

- Century International Arms, Model WASR10, 7.62 X 39mm caliber rifle, SN# 1966AC0516 (The Guns Store- 12/1/2010)
- Century International Arms, Model GPWASR10/63, 7.62 X 39mm caliber rifle, SN# 1972CC0647 (Guns Galore – 12/6/2010)

38. Your affiant has determined that LIRA is currently residing at 600 Barwood Park # 1626, Austin, Texas. Surveillance has been conducted at that apartment complex and LIRA has been observed at the complex. The vehicle that LIRA drives has been seen at that same address on several different dates by different ATF Agents.
39. The utilities at 600 Barwood Park # 162 come back to Jordan Breann MCCOY. Your affiant has determined that MCCOY is the current girlfriend of LIRA based on a 2009 stay in Hays County Jail where LIRA lists MCCOY on his visitor log as his girlfriend.
40. Your affiant has records for MCCOY purchasing the following firearms:
 - DPMS, Model A-15, .223 caliber rifle, SN# FH80444 (Guns Galore- 11/11/2010)
 - CAI, Model WASR10, 7.62 X39 mm caliber rifle, SN# 1965NO4686 (Guns Galore – 11/11/2010)
 - Keltec, Model PLR-16, .223 caliber pistol, SN# P6B09 (Austin Tactical Advantage - 12/22/2010)
 - Keltec, Model PLR-16, .223 caliber pistol, SN# P6B03 (Austin Tactical advantage – 12/22/2010)
41. Jordan MCCOY appears to be on video surveillance on December 17, 2010 at The Gun Store in Cedar Park, Texas. MCCOY appears on video with Giovanna RIVERA. On this occasion, RIVERA purchased two assault rifles and paid cash.
42. Your affiant has participated in and has knowledge of the execution of many warrants. Based on this experience and knowledge, I know that persons possess in their residences, businesses, or other real property and vehicles over which they have dominion and control, documents which indicate their occupancy and/or ownership such as: personal mail, checkbooks, identification, notes, correspondence, utility bills, rent receipts, payment receipts, financial documents, keys, photographs, leases, mortgage bills, vehicle registration information, ownership warranties, receipts for vehicle parts and repairs, telephone answering machine introductions, that persons often have containers of undeveloped photographic film, containing photographs (when developed) of themselves occupying the property and vehicles and that these containers of film are usually located within the property and/or vehicles which are under their dominion and control.

43. Your affiant knows that in gun trafficking cases, the smugglers usually look for ways to break down the firearms that are purchased so the firearms can be easily concealed. This usually means that the smuggler removes gun boxes, trigger safety locks, firearms safety literature, receipts for purchases, owner manuals, price tags, firearms accessories, copies of any paperwork given to them by the licensed dealer, etc. On previous search warrants, these items have been found in possession of the smugglers.
44. Based on the aforementioned facts stated above, your affiant has probable cause to believe that evidence of violation of Title 18 U.S.C., Section 2, 371, Section 922 (g) (1) and Section 922 (a) (6) will be found at the residence located at 600 Barwood Park # 1626, Austin, Travis County, including any storage area, parking area, and vehicles on the premises.

Wherefore, your affiant respectfully request that a warrant be issued authorizing the Bureau of Alcohol, Tobacco, Firearms and Explosives, with appropriate assistance from other law enforcement officers to enter the premises located at 600 Barwood Park # 1626, Austin, Travis County, Texas and any other associated storage area, parking/garage area, and vehicles on the premises as described in "Attachment A" and therein search for and seize the items set forth in "Attachment B".

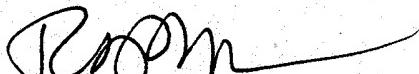
I, your affiant, Kristi R. McPartlin, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Kristi R. McPartlin

ATF Special Agent

Sworn and subscribed to me on this 25th day of January 2011.



Robert Pitman
United States Magistrate Judge